Supreme Court, U.S.
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No. _____

In The
SUPREME COURT OF THE UNITED STATES

EX PARTE
RICHARD JOHN FLORANCE, JR.,
Applicant – *Appellant* – Petitioner – Petitioner

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS AND/OR THE COURT OF APPEALS, FIFTH DISTRICT OF TEXAS AT DALLAS

ORIGINAL PETITION FOR A WRIT OF CERTIORARI WITH APPENDICES A AND B

RICHARD JOHN FLORANCE, JR.
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Questions Presented

Disqualification

1. Is a "convicting court" *disqualified* from presiding over habeas?

2. Is BARRY *disqualified* from presiding over RJF's habeas?

Denial of Access

3. Where the trial court doesn't reach the merits of habeas, is the applicant denied access?

4. Did BARRY reach the merits?

Record commingling

5. May a trial court commingle habeas applications into the Record of the underlying case?

Parties

Petitioner

RICHARD JOHN FLORANCE, JR. ("RJF")
Applicant – *Appellant* – Petitioner – Petitioner

Respondent

STATE OF TEXAS ("STATE")
Respondent – Appellee – Respondent – Respondent

JOHN R. ROACH, District Attorney, Collin County

JOHN R. ROLATER, JR., Asst. DA, Chief, Appellate Division

Hon. GREG ABBOTT
STATE's Attorney General

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Petition for a Writ of Certiorari

RJF petitions for a writ of certiorari to the Supreme Court of Texas and/or the state appellate court as follows:

Citations to decisions below

None.

Jurisdiction

(i) Supreme Court of Texas "denied" review
20 August 2010 [+90: 18 Nov 2010].
No. 10-0616 (Tex.) (unpublished).

(ii) Extension N/A

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. §§ 1257(a) (final), 2101(c).

(v) Regarding Rule 29.4(c)
STATE is a party. All activity in STATE's courts.

No Oral Argument Requested

Oral argument is not expected to aid in the resolution of this matter.

Statement of the Case

When Federal Questions Were Raised

This is a review of a state habeas application. The issues here are largely collateral to the illegality of RJF's "restraint". RJF argued in his application that

due to personal interest, BARRY, the "convicting court", was/is ***disqualified*** from also being the habeas court. Also, the appellate court dismissed the appeal saying BARRY never reached the merits. If that's possible, then there is no right to habeas, no right of access, and no structural due process (separation of powers).

RJF requested discretionary review and stay. The Supreme Court of Texas denied both. Their promptness is appreciated, because we're staring at a prospective mootness problem.

Some relevant history.

By Star Chamber, STATE obtained a "civil" "judgment". *See* No. 07-171 (cert. den.). In that "judgment", prepared by STATE's/TAYLOR's attorney, STATE confessed that whatever "lien or claim" was involved, it "IS NOT" a claim on property. *See* App. B-4 (item (4)) ("Star Chamber 'judgment'").

By Notice dated (Saturday) 1 April 2006, the Collin County Sheriff's Office informed RJF of the charge under TEX. PENAL CODE § 32.49 and that he should arrange bail, which RJF did promptly.

In Round 1, Judge Lewis struck the statute and dismissed the case. STATE appealed. Reversed; case reinstated. Judge Lewis self-recused, and BARRY became the transferee court.

In Round 2, RJF reasserted all his challenges to jurisdiction *and* requested pre-trial habeas. BARRY commingled the pre-trial habeas into the underlying Record as if it were a pre-trial motion. Then BARRY waited about a month before denying it, clearly having no intention of ruling on it, at all.

At trial, RJF introduced the Star Chamber

"judgment", but the Record nowhere reflects that BARRY ever published it to the advisory panel. The advisory panel said, "Guilty", and BARRY said "180 days in jail" (first offense, misdemeanor).

RJF appealed. Affirmed. On discretionary review in both high courts simultaneously, the Supreme Court of Texas, which exercises "civil" jurisdiction only, GOV'T CODE § 22.001(a), "denied" RJF's petition. *See* No. 09-1028 (Tex.). If this had *ever* been a "criminal" case, they would have "dismissed". TEX. R. APP. P. 56.1(b). *Cf.* No. 10-172 (cert. den. pending). "[D]enied" heralded to the conscious world that the matter was *never* a "criminal" case and completely exonerated RJF, ending the matter in RJF's favor.

But, the appellate court's Mandate did not reflect that their ruling had been REVERSED (or perhaps more accurately, VACATED).

The present matter.

Anticipating the consequences of the falsified Mandate, RJF moved for stay and applied for habeas in the trial court. STATE responded to the stay, and RJF replied. RJF stated clearly the significance of the "denied" ruling. The DA, recognizing that RJF might be right, ***strongly*** urged BARRY to issue the capias, anyway. On or about 19 May, in defiance of No. 09-1028 (Tex.), BARRY instructed the clerk to issue the capias. On 21 May, BARRY denied both stay and habeas, without any in-person hearing, in a very unique way: hand-written orders on **signature pages**. Again, BARRY commingled habeas into the underlying case as if it were a mere motion.

RJF *appealed*. The appellate court opened *two* cases: 715-CV and 688-CR. In 715-CV, the panel

denied both stay and an original application for habeas that RJF never requested. (This is not a contempt matter). In 688-CR, broadcasting they think RJF's position is meritless, and noting there was no in-person hearing, the panel dismissed the appeal on a "right of habeas"-denying theory that habeas may be denied ***without*** reaching the merits.

RJF has work release, which is 12 hours in jail and 12 at work, except on Sundays and holidays when it's 24 hours in jail. As of 26 August, RJF has been on work release for 100 days. Credit for "good conduct", if allowed, would end the illegal incarceration mid-September, 2010; hence, reliance on the exception to mootness. [1]

For abuses that include criminality, RJF has charged BARRY criminally and sued him commercially. *See* Florance v. Schell, et al., No. 3:09-CV-1470 (ND TX, Dal. Div.) (case dismissed, RJF sanctioned, 8 July 2010; appeal initiated).

Argument

Disqualification

1. Is a "convicting court" *disqualified* from presiding over habeas?

There are not many federal cases addressing state court judge *disqualification*, but of those few, one is recent. *Caperton*. *See also Aetna Life Ins. Co.*; *Ward*;

[1] Further investigation has revealed that Sheriff BOX typically gives "good conduct" credit solely to those who work for him (the county). That greatly exceeds the statutory scope of discretion. That matter hasn't yet become a case or controversy.

Mayberry; *In re Murchison*; *Tumey*.

"Due Process" covers several concepts. Right to habeas (i.e., review of restraint), not unlike discretionary review, realistically equates to a right to a fair trial, including an unbiased, not-directly-interested judge/panel/court. Similarly, the right of access presumes an unbiased, not-directly-interested jurist. Whatever the label, whether a judge has in interest in the outcome is a federal question.

For this one, RJF considers the ruling in No. 09-1028 (Tex.) irrelevant. Per CRIM. PROC. CODE art. 11, the "convicting court" is the forum in which habeas is to be filed. *See also Ex Parte Woodward*. That's a red flag problem where lack of jurisdiction, a mainstay ground for habeas, *Ex Parte Cruzata*, 220 S.W.3d at 521 (Meyers dissent), *Ex Parte Richardson*, *Ex parte McKay*, has been asserted essentially since Day One.

Obviously, lack of jurisdiction isn't the *sole* basis on which habeas may be granted. Therefore, where lack of jurisdiction isn't raised in the habeas application, the "convicting court's" personal interest in habeas may be minimized. But, in those matters where lack of jurisdiction has been raised from the outset, to allow the "convicting court" to rule on habeas is to allow the fox to guard the henhouse. A court acting without jurisdiction has no immunity. *Cf. Halsey* (absolute immunity protects discretion exercised ***within*** the scope of jurisdiction); *Pierson* (citing *Bradley*) (same).

In general, there are three areas of inquiry for *disqualification*: interest, connection, and counsel. *Tesco American, Inc.* The focus for this blanket study of *disqualification* is the first one: interest. *See also*

TEX. RS. CIV. P. 18a, 18b, 18b(1)(b); *McKenna*. As a blanket rule, the "convicting court" is the last court on the face of the planet to be handling habeas where jurisdiction is a prevalent issue.

2. Is BARRY *disqualified* from presiding over RJF's habeas?

BARRY's interest ***screams*** from the page! *See* Question 1.

For this one, the ruling in No. 09-1028 (Tex.) is extremely relevant. BARRY has criminally violated RJF in multiple ways from the instant BARRY first got this non-case. RJF has sued BARRY, charging him criminally *and* for acting without jurisdiction as the basis for the damages asserted. *See* Florance v. Schell, et al., No. 3:09-CV-1470 (ND TX, Dal. Div.). [2]

In a last ditch effort to give BARRY a really good reason to mitigate his own damages, RJF discussed the clear meaning of "denied" in his motion for stay (and his reply) in BARRY's court. WESTERFELD (Asst. DA) even recognized that RJF might be "right", but energetically encouraged BARRY to issue the capias, anyway. BARRY ***knew*** that to grant

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[2] BARRY, as one of several defendants, avoided the "process server" (the Postal Service) in that federal case, which is *another* federal crime, in and of itself. Texas law allows (limited) avoidance of the process server. Quite to the contrary, the federal law tolerates that not one bit.

RJF is definitely ***not*** saying that the mere existence of a lawsuit against a sitting judge is sufficient to trigger ***disqualification***. RJF ***is*** saying that the lawsuit clearly documents and renders inescapable the real-time, live, active fact that BARRY ***has*** a direct and personal stake in the outcome of this litigation, including habeas.

habeas was to confess that he never had jurisdiction, i.e., that RJF was "right" from Day One, that Judge Lewis was "right" to dismiss the non-case, that BARRY should have granted at least one of RJF's motions to end this witch hunt a long time ago, whether dismissal or pre-trial habeas, that BARRY was and is properly sued by RJF, that BARRY committed *another* federal offense by avoiding the process server in that case, that BARRY should ***never*** have jailed RJF, and, basically, that BARRY, ***and*** the DA's Office, ***and*** the appellate court have ***all*** been "wrong" about RJF ***and*** the facts ***and*** the law from the beginning. BARRY opted instead to repudiate his oath, one more time, to the point of defying No. 09-1028 (Tex.), rather than either (A) granting RJF's habeas application, which ruling is (1) mandated by law but (2) both legally adverse to BARRY and egotistically unrealistic (RJF is *pro se*), or (B) stepping aside so as to withdraw, finally, from the criminal conspiracy under color against RJF.

BARRY had/has a personal interest in the outcome of RJF's habeas. BARRY's order of arrest of RJF, BARRY's denial of RJF's motion to stay, and BARRY's denial of habeas all came ***after*** BARRY had both effective and actual Notice of the ruling in No. 09-1028 (Tex.). The matter was over; RJF had won. But the Mandate didn't reflect that reality. BARRY should never have even *thought* of jailing RJF, but BARRY jailed him anyway, having both RJF's motion for stay and habeas application before him. Since the law ***compels*** discharging RJF, *cf. Ex Parte Tuley*, 109 S.W.3d at 390 (incarceration of an innocent person offends federal due process), the only logical explanation for BARRY's defiant denial is his

own personal interest in the outcome.

Mootness exception.

Since time for this debate is ***extremely*** short, and since RJF is most assuredly subject to a repeat of this nightmare from hell, given the rampant lawlessness attendant in this matter by ***all*** of the DA (who knows what additional, bogus, politically-motivated "criminal" charges this DA's Office has in mind?), BARRY, ***and*** the appellate court, [3] this issue, in particular, and this case, generally, exist as the classic example of the exception to mootness. *Cf. Alvarez*, 130 S. Ct. at 581; *Spencer*, 523 U.S. at 17; *Padilla*, 547 U.S. at 1064 (Ginsberg, J., dissent). [4]

Denial of Access

3. Where the trial court doesn't reach the merits of habeas, is the applicant denied access?

Right to habeas.

Anyone and everyone subject to "restraint" within "this state" has a ***right*** to habeas, i.e., to challenge that "restraint". *Boumediene*; *Ex Parte Reynoso.*

Therefore, if it's *possible* to refuse to address the merits of the civil suit challenging "restraint", it's *impossible* to say that there's still a right to habeas. [5]

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[3] To their credit, the appellate court did act promptly on these habeas matters. Lawlessly, mindlessly, rebelliously, in defiance of their oaths, but promptly.

[4] RJF is aware that his options include mandamus, writ of error coram nobis, and bill of review.

[5] The appellate court obviously considers RJF's application meritless, by which "ruling" they justify BARRY's not reaching

Therefore, the mere ***existence*** of the *jurisdictional* question raised in, e.g., *Ex Parte Noe* and *Ex Parte McCullough*, i.e., "Did the habeas court reach the merits?", confesses the ***systemic*** approval of the overt denial, under color, of the right to habeas, among other rights inexorably associated with habeas, e.g., access and separation of powers.

Right of access.

What is habeas? The challenge in court to the legality of the "restraint". "[T]he central purpose of habeas corpus is to test the legality of executive detention ...." *Boumediene*, 128 S. Ct. at 2283 (Section II; para. begins with "Because"). Key, inherent within habeas is the ***structural*** recognition of separation of powers. *Boumediene*. Thus, if the merits of habeas are ***not*** addressed, then not only is the right of *habeas* denied, and not only is the separation-of-powers-based ***structure*** overthrown, but also the right of *access* to the court *to* challenge the restraint is denied, all under color of law ("force"). *Cf. Harbury* (discusses denial of access).

The right of access necessarily presumes access to a judge that is not *disqualified*, given that rulings by *disqualified* judges are null and void. The system has to be, and still is, structured in such a way that ***all*** litigants have access to an authorized judge.

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the merits. But, how does even a ruling of meritless ***fail*** to reach the merits?! If the ruling doesn't reach the *merits*, what's ***left*** to call meritless? They're not even ***trying*** to apply the law.

4. Did BARRY reach the merits?

This question is facially preposterous!

On the theory side, at no time ever in the history of American jurisprudence should this question have even come to mind, much less get documented, *much less* justify refusal to address habeas on appeal. If it's *possible* to address a habeas application ***without*** reaching the merits, then it's *impossible* to say that there's a right to habeas (review of "restraint"), a right of access, or structural separation of powers.

Practically, BARRY did *not* say, "Dismissed"; he said, "[D]enied". This is not rocket science.

> IF NO RULING ON THE MERITS, THEN NO RIGHT TO HABEAS.

This question should never even have *appeared* in American jurisprudence!

Rulings such as *Ex Parte Noe* and *Ex Parte McCullough* are so egregiously outrageous as to raise very fundamental questions about the policies of "this state". ***Of course*** the habeas court reaches the merits! That has happened in every single habeas case that has ***ever*** been filed. As addressed in Question 3, if the habeas court *doesn't* reach the merits, then there is no (A) right to habeas, (B) separation-of-powers-based structure, ***or*** (C) access to the court to assert the right of habeas. Explain ***that*** to the survivors of Normandy, to the descendants of those massacred at Goliad, to the descendants of the defenders of the Alamo, etc.

Since no abstention theory applies, only one lawful reason remains as to why a trial court would *not* reach the merits of a civil matter, including

habeas: want of jurisdiction. County courts *have* jurisdiction to rule on habeas applications. GOV'T CODE § 25.0004(a).

Therefore, the pieces to fit together are these. A "restrained" party has the ***right*** to challenge that "restraint". A party "restrained" in "this state" also has the inexorably associated ***rights*** of both a separation-of-powers-based structure *and* access to a court by which to exercise his right to challenge his "restraint". A county court judge has generic authority to reach the merits of a habeas matter. But, spitting in the face of all that, the *appellate* court says that BARRY never reached the merits. This lawless policy is absolutely unbelievable!

There's only one way all of that comes anywhere near going in the same box. Since there is no assertion of abstention, which wouldn't apply anyway, all that remains to explain how a habeas court ***doesn't*** reach the merits is the confession of ***disqualification***. *Disqualification* is the only possible, conceivable explanation as to why ***any*** county court has no jurisdiction to reach the merits of the civil case asserted by the "restrained" party challenging his "restraint". ***Any*** other remote justification for not reaching the merits of habeas confesses ***systemic*** denial of the right to habeas, as well as ***systemic*** intent to overthrow the separation-of-powers-based structure, as well as ***systemic*** denial of the right of access, ***all*** engaged under color of law and office.

BARRY SAID, "[D]ENIED".

The preceding discussion looks at the theory/policy level. This part looks at the practical side.

This foreshadows the discussion on where/how BARRY "[D]enied" habeas, namely by a handwritten ruling on p.118 of RJF's application, i.e., the **signature page**, but it's introduced here to support the use of the epithet *facially preposterous*.

This is an extremely distant second point. If this issue turns solely on this practical view, we're so far lost in tyranny that it may not matter. Presuming it still matters, let's reflect for a moment on what is excruciatingly painfully obvious.

For this one, we're not even yet to Procedure 101 in law school. We're still in procedural Kindergarten or elementary school. BARRY's ruling says, "[D]enied". His ruling is not, "Dismissed". It is, "[D]enied." The only way *not* to reach the merits is to say "Dismissed". BARRY didn't say, "Dismissed". He said, "[D]enied". Therefore, **BARRY reached the merits!** This is not rocket science.

For an appellate court to say that "denied" (which reaches the merits) means "dismissed" (which doesn't reach the merits) is for the appellate court completely to rewrite the ruling and/or turn the entire law of habeas on its head. Neither form of defiance of their oaths justifies such ruling.

The appellate court may feel duty bound by precedent. But, to save face, to show any *remote* semblance of self-respect, at all, they needed to enter a dissenting opinion. Now, they may not feel they had time under the workload and the time constraints applicable to habeas to supply much detail for such dissenting position, but the "dismissed v. denied" paragraph, *supra*, isn't *that* long, and it more than adequately communicates the point.

In short, the appellate court isn't even ***trying*** to

reason through this. First they rewrote No. 09-1028 (Tex.) "denied" as "dismissed". Now they rewrite BARRY's "denied" as "dismissed". They're looking solely to justify ruling against RJF. [6] Thus, **first** the (politically motivated) decision, ***then*** the "analysis".

The question of whether a habeas court "reached the merits" is ***tortuously*** preposterous. That question should never, ever, ever have appeared at ***any*** time under ***any*** circumstance in American jurisprudence. Ever.

No – he's *disqualified!*

If it were *ever* conceivable to ask whether BARRY reached the merits, to do so here is to put the cart before the horse. This was ***never*** a "criminal" matter. No. 09-1028 (Tex.). Therefore, STATE never had "criminal" standing, meaning BARRY never had jurisdiction. It follows, then, that his post-judgment rulings are as void as his trial rulings. *See United Student Aid Funds, Inc.*; *Carter*. Lack of jurisdiction renders a judgment void. *Nix*. No trial court has jurisdiction where STATE lacks standing. *Sunset Valley*, 146 S.W.3d at 646; *Tex. Dept. of Parks & Wildlife v. Miranda*.

The *additional* problem for BARRY is that STATE's Supreme Court ***told*** BARRY he had no lawful basis to incarcerate RJF. Blinded by his personal interest, and he did it anyway! BARRY is ***disqualified*** from habeas. *Dunn* (even mandamus exists to set aside rulings by *disqualified* "judge", which rulings are null and void); *Buckholts Indep.*

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[6] This particular appellate court is also a defendant in that same suit in which RJF sued BARRY. *See* n.2 and its text.

Sch. Dist., 632 S.W.2d at 148 ("constitutional" *disqualification* may be raised at any time; rulings are a nullity); [7] *Whitehead* ("interest" case – where judge is injured party, his judgment was a nullity) (application: judge may be injuree ***or*** injuror).

In short, because BARRY is ***disqualified***, it's impossible for him to reach the merits of habeas. His "ruling", which was "[D]enied", is a null and void.

Does that operate to STATE's *benefit*, as the appellate court would leave it? Not hardly! The appellate court has ***refused*** to honor its oath and to exercise its jurisdiction, and there is no ruling, at all, yet, on RJF's habeas application.

Yes – and by so doing, confesses he's *disqualified!*

To address this is to get a deep massage with No. 12 sandpaper. It's legally impossible for this question ***ever*** to have legal significance or merit. Ever. All that said, ***of course*** BARRY reached the merits! In defiance of No. 09-1028 (Tex.), BARRY is still arguing STATE's position, thus ***his jurisdiction***. STATE never had a case, but in BARRY's (*and* the DA's, ***and*** the appellate court's) extremely limited understanding of the law applicable here, for there to be a case, there would have to be a document; for there to be a document, it would have to have RJF's signature. Thus, what BARRY is doing post-judgment is marketing RJF's signature at every opportunity. BARRY denied stay

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[7] Obviously, this means that the appellate court ***has*** jurisdiction. They are entitled to be wrong on the merits, but to "dismiss" is to deny access, etc. Also, such rulings as *Ex Parte Richardson* (CCA) are unmitigated non-sense. How in the world may a party ***ever*** waive a "constitutional" jurisdictional prohibition? Even a writ of error coram nobis would work.

by handwritten ruling on a **signature page** of that motion. BARRY then denied (not dismissed, but denied) habeas by *another* handwritten ruling on yet *another* **signature page**. BARRY is saying this. "You look at this signature and compare it to the one on the document in question. You tell me that's not his signature!" Clearly, what BARRY is doing by his **two *very*** unusual, handwritten rulings on **signature pages** is marketing RJF's signature, thus STATE's position, namely that STATE ***does*** have a signature, therefore a document, therefore a case; hence, that BARRY ***has*** jurisdiction! It's BARRY's futile rebuttal of No. 09-1028 (Tex.).

In short, it's *beyond* mindless for the appellate court to say that BARRY ***didn't*** reach the merits in the face of BARRY's self-interested acts of ***still arguing*** STATE's position, i.e., ***his jurisdiction!***

The rub!

What could *possibly* confess BARRY's personal interest in the matter more clearly than BARRY's extremely transparent, self-serving, oath-defying acts of ***still arguing*** STATE's futile position, thus ***his jurisdiction***, by marketing RJF's signature, in the face not only of RJF's federal lawsuit but also of the ruling in No. 09-1028 (Tex.)?!

Moreover, BARRY sent himself on a fool's errand! "Who signed what" was *never* relevant. STATE never had any evidence that anyone had animated the FEDERAL CAPACITY.

But, even if someone *had*, STATE confessed in its Star Chamber episode that whatever STATE thought it saw in the way of a lien or claim, it "IS NOT" a claim on property. In the underlying case, see Ex. 4-106 (item 4 at bottom of p.1) (vol. 10). *See also* Tr.

vol. 7 at 20-21. *See* App. B-4 (item (4)). It was/is the ultimate "inconsistent statement" for STATE to say in BARRY's court that the very same "lien or claim" "IS" a claim on property, Tr. 2008 Jul 17 p.11 (vol. 7 of 10), having already judicially confessed in RUSCH's (state *district*) court that it "IS NOT".

Even more plainly, just as with the Star Chamber episode, the Record in the allegedly "criminal" matter contains no Notice to RJF. STATE still thinks it may excuse itself from Notice. *See* Art. 25.04. *Cf.* Art. 25.03 (same for felony cases).

There's a very good reason why STATE's Supreme Court labeled the underlying matter as "civil". In sum, the fact that STATE never proved up any signature, and therefore had no such evidence, was/is just one ***more*** problem BARRY can never fix.

Record commingling

5. May a trial court commingle habeas applications into the Record of the underlying case?

Habeas is an independent, civil action. Habeas is the equitable claim challenging "restraint". It is *not* a mere motion in the underlying proceeding. It is a completely separate case.

This Court may take Judicial Notice that BARRY commingled RJF's pre-trial habeas with the underlying case. There being no correction of that on direct appeal, BARRY continued the practice and commingled RJF's post-judgment habeas with the underlying case, as well.

Time has come to address this.

Relief Requested

Premises considered, RJF requests the following remedies and relief:

(A) Grant the petition and take jurisdiction;

(B) Vacate the ruling(s) below;

(C) Overrule *Ex Parte Noe* and *Ex Parte McCullough*, and all other rulings that pretend to allow a habeas court to rule ***without*** reaching the merits,

(D) Declare BARRY ***disqualified*** from RJF's habeas proceeding;

(E) Declare all "convicting courts" *disqualified* from habeas where jurisdiction is challenged;

(F) Confirm that habeas is an independent, civil proceeding, that has its own civil case number;

(G) Remand to the appropriate Court/court with instructions that RJF be discharged or that habeas be heard by a competent jurist;

(H) Allow RJF to brief any additional issues;

(J) Grant RJF costs; and

(K) Grant RJF any and all other relief at law, in equity, or sui generis, to which he may show himself justly entitled.

Respectfully submitted,

/s/ Richard John Florance, Jr.
Richard John Florance, Jr.

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Appendix A—Review of Habeas

Rule 14.1(i)(i)—State Court of Last Resort

2010 Aug 20—Review denied—S.Ct. of Texas

[SEAL of THE STATE OF TEXAS]

OFFICIAL NOTICE FROM
SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711-2248

RE: Case No. 10-0616 DATE: 8/20/2010
COA #: 05-10-00715-CV; 05-10-00688-CR
TC #: 002-81238-06
STYLE: EX PARTE RICHARD JOHN FLORANCE, JR.

Today the Supreme Court of Texas denied the petition for review in the above-referenced case. The Motion for Stay of Execution of Judgment and the Motion to Accelerate (Shorten) Reconsideration are denied.

MAIL TO:
MR. RICHARD JOHN FLORANCE JR.
1908 VASSAR DRIVE
RICHARDSON TX 75081

[Pitney Bowes meter mark:
UNITED STATES POSTAGE
02 1A $ 00.28[0]
0004392386 AUG 23 2010
MAILED FROM ZIP CODE 78701]

Rule 14.1(i)(ii)—Additional Orders

State appellate court

2010 Jun 22 – Denied habeas that RJF never requested

Writ of Habeas Corpus Denied; Opinion issued June 22, 2010

[Seal of THE STATE OF TEXAS]

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-10-00715-CV

IN RE RICHARD JOHN FLORANCE, Relator [*]

Original Proceeding from the
County Court at law No. 3 Collin County, Texas
Trial Court Cause No. 002-81238-06

MEMORANDUM OPINION

Before Justices Morris, Richter, and Murphy
Opinion by Justice Morris

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[*] [N.B. In the motion to reconsider, RJF objected to this label. To be a Relator is to initiate an original proceeding. TEX. R. APP. P. 3(f). RJF *appealed*. This is not a contempt case. *RJF*]

Relator contends the trial court erred in sentencing him to jail for failure to release a lien. The facts and issues are well known to the parties, so we need not recount them herein. Relator admits that he is not currently incarcerated. Accordingly, we DENY relator's petition for writ of habeas corpus and motion for stay of execution of judgment. *See* TEX. R. APP. P. 52.3(k)(1)(D); *In re Stephens*, No. 10-07-00278-CV, 2007 WL 2896902, at *2 (Tex. App. Waco Oct. 4, 2007, orig. proceeding).

/s/ Josesph B. Morris
JOSEPH B. MORRIS
JUSTICE

100715F.P05

Order issued June 22, 2010

[Seal of THE STATE OF TEXAS]

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-10-00715-CV

IN RE RICHARD JOHN FLORANCE, Relator [*]

Original Proceeding from the
County Court at law No. 3 Collin County, Texas
Trial Court Cause No. 002-81238-06

O R D E R

Before Justices Morris, Richter, and Murphy

Based on the Court's opinion of this date, we **DENY** relator's petition for writ of habeas corpus and relator's motion for stay of execution of judgment. We **ORDER** that relator bear the costs of this original proceeding.

/s/ Josesph B. Morris
JOSEPH B. MORRIS
JUSTICE

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[*] [N.B. In the motion to reconsider, RJF objected to this label. To be a Relator is to initiate an original proceeding. TEX. R. APP. P. 3(f). RJF *appealed*. This is not a contempt case. *RJF*]

2010 July 28 – "DISMISSED" (for want of jurisdiction) † RJF's appeal of BARRY's "denial" of habeas

DISMISS and Opinion Filed July 28, 2010

[Seal of THE STATE OF TEXAS]

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-10-00688-CR

EX PARTE RICHARD JOHN FLORANCE, JR.

On Appeal from the County Court at Law No. 3
Collin County, Texas
Trial Court Cause No. 002-81238-06

MEMORANDUM OPINION

Before Justices Richter, Lang-Miers, and Myers
Opinion By Justice Richter

Richard John Florance, Jr. was charged by information with failure to release a fraudulent lien or claim, a class A misdemeanor. *See* TEX. PENAL CODE ANN. § 32.49 (Vernon 2003). Following a jury

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† [N.B. This may belabor the obvious, but this proves they ***know*** the difference between "dismissed" and "denied". *Cf.*, again, No. 09-1028 (Tex.) ("denied"). *RJF*]

trial, appellant was found guilty and the trial court assessed punishment at six months in the county jail and a $2000 fine. The judgment of conviction was affirmed on appeal. *See Florance v. State*, No. 05-08-00984-CR (Tex. App. Dallas Aug. 28, 2009 pet. ref'd). *cert. denied*, 130 S.Ct. 3294 (2010). Appellant thereafter filed an application for writ of habeas corpus collaterally attacking his conviction. The trial judge denied the application. We directed the parties to address our Jurisdiction over the appeal. *See Ex parte Hargett*, 819 S.W.2d 866, 869 (Tex. Crim App. 1991). Appellant responded that we have jurisdiction because the habeas proceeding is a civil matter and civil jurisdiction is inherit. The State responds that this Court does not have jurisdiction [⊥ 2] over the appeal because the trial judge did not rule on the merits of appellant's application.

The crucial question in determining our jurisdiction is not whether the trial court issued a writ, but whether the trial court considered and resolved the merits of the application. *See Ex parte Hargett*, 819 S.W.2d at 869; *Ex parte Pool*, 71 S.W.3d 462, 465 (Tex. App.—Tyler 2002, no pet.). If the trial judge reached the merits of the complaint, the ruling is appealable, even if the court's order simply denied the writ. *See Ex parte Hargett*, 819 S.W.2d at 869. On the other hand, even if the judge's decision not to issue the writ is based, at least in part, on a determination that the claims lacked merit, that alone does not entitle an appellant to appeal. *See Ex parte Pool*, 71 S.W.3d at 465; *Ex parte Miller*, 931 S.W.2d 724, 725 (Tex. App.—Austin 1996. no pet.) (per curiam).

In this case, no hearing was conducted on

appellant's application for writ of habeas corpus. The trial court wrote on the last page of the application. "application for writ of habeas corpus denied May 21, 2010." Although appellant declares, in his letter brief, that the trial judge reached the merits of his application for writ of habeas corpus, there is nothing in the record that indicates the trial court held a hearing on or ever considered the merits of the application before denying it. We conclude the trial judge did not rule on the merits of appellant's application for writ of habeas corpus, which leaves us without jurisdiction over the appeal.

We dismiss the appeal for want of jurisdiction.

/s/ Martin Richter
MARTIN RICHTER
JUSTICE

Do Not Publish
TEX. R. APP. P. 47
100688F.U05

2010 Jul 28—Judgment

(Seal of THE STATE OF TEXAS)

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

EX PARTE RICHARD JOHN FLORANCE, JR., NO. 05-10-00688-CR		Appeal from the County Court at Law No. 3 of Collin County, Texas. (Tr.Ct.No. 002-81238-06). Opinion delivered by Justice Richter, Justices Lang-Miers and Myers participating.

Based on the Court's opinion of this date, we **DISMISS** the appeal for want of jurisdiction.

Judgment entered July 28, 2010.

/s/ Martin Richter
MARTIN RICHTER
JUSTICE

Trial court

2010 May 21—BARRY denied habeas

[N.B. BARRY's order is handwritten on p.118, i.e., the **signature page**, of the habeas Application. *RJF*]

- A declaration that neither Information was ever legally insufficient;
- A declaration that Art. 25.04 is void for defiance of Due Process;
- A declaration that the process applied violated Due Process by denying RJF access to the Venire;
- A declaration that the instructions directed the verdict, unlawfully shifted the burden, and otherwise relieved STATE of its burden;
- A declaration that BARRY can't compel pro se defendants to agree to particular waiver language;
- A declaration that the DA never proved having sufficient signature authority;
- And a declaration that STATE never proved having standing.

- Award RJF costs; and
- Grant any and all other relief at law, in equity or sui generis to which he may show himself justly entitled.

Respectfully submitted,

Richard John Florance, Jr.
/s/ Richard John Florance, Jr.
Richard John Florance, Jr.

Application for writ of

habeas corpus denied

I reserve all rights not specifically waived.
1908 Vassar Drive
Richardson, Texas, 75081

May 21, 2010 John O. Barry Judge

Post-judgment Habeas (Florance) 118

This was never a "criminal" case". [sic] No statute. No evidence.

2008 Jul 17—Final Judgment (BARRY)

Cause No. 002-81238-06

THE STATE OF TEXAS

VS.

RICHARD JOHN FLORANCE JR

IN THE COUNTY COURT

AT LAW NO. 3

COLLIN COUNTY, TEXAS

JUDGMENT – PLEA OF NOT GUILTY BEFORE JURY – FOUND GUILTY PUNISHMENT BY COURT – FINAL CONVICTION

The defendant has been charged by information with the misdemeanor offense of **REFUSE**

EXECUTE RELEASE FAUDULENT [sic] **LIEN/CLAIM**. This case was called for trial; the State of Texas appeared; and the defendant appeared and either had counsel or waived counsel, any waiver having been voluntarily, knowingly, and intelligently made. Both parties announced ready for trial. The defendant was arraigned or waived arraignment and pleaded Not Guilty. A jury, to wit: and five others, was duly selected, impaneled and sworn.

And after hearing the Information read, the defendant's plea, and the evidence submitted, the jury was then duly charged according to the law to determine the guilt or innocence of the defendant. After hearing arguments of counsel, the jury retired in charge of the proper officer to consider its verdict, which was received and is now entered upon the minutes of the Court, to wit:

"We, the Jury, find the defendant guilty of **REFUSE EXECUTE RELEASE FAUDULENT** [sic] **LIEN/CLAIM** as charged in the Information."

Presiding Juror

It is therefore ORDERED, ADJUDGED and DECREED that the defendant is guilty of the misdemeanor offense of **REFUSE EXECUTE RELEASE FAUDULENT** [sic] **LIEN/CLAIM** committed on the **13TH** day of **FEBRUARY, 2006**, as charged in the Information.

The defendant in open court elected that the Court assess the punishment. After hearing the evidence and argument of counsel, the Court assessed a fine of **$2000.00**, costs of the Court, and

180 DAYS confinement in the County Jail.

It is further ordered that the cost to Collin County for the payment of this defendant's court-appointed attorney, if any, is taxed against this defendant as court costs. The county clerk is granted leave to amend the court costs to reflect this amount without the necessity of a further order.

It is further ORDERED, ADJUDGED, DECREED that all writs, processes, commitments, and capii my issue for enforcement of any fine, cost and sentence.

It is therefore ORDERED, ADJUDGED, and DECREED that the defendant be remanded to the custody of the Sheriff of Collin County, Texas, to be confined until all such costs and fines are paid, and until the term of confinement has expired, with 1 **DAY** credit for time already served in custody.

SIGNED this **17TH** day of **JULY, 2008**.

/s/ Richard John Florance, Jr.
Rights Reserved

I am the defendant who
received this judgment
and sentence assessed
on this date.

/s/ John O. Barry JM
JOHN BARRY
JUDGE PRESIDING **COPY**
Fine and costs due **INSTANTER**
COURT COST **298.48**

Rule 14.1(i)(iii) –Any Rehearing

None in Supreme Court of Texas.

Fifth District – Rehearing Denied 2010 Jul 13

Order issued July *13*, 2010

[Seal of THE STATE OF TEXAS]

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-10-00715-CV

IN RE RICHARD JOHN FLORANCE, Relator [1]

Original Proceeding from the
County Court at law No. 3 Collin County, Texas
Trial Court Cause No. 002-81238-06

O R D E R

Before Justices Morris, Richter, and Murphy

The Court has before it relator's motions for rehearing and consolidation. The Court **DENIES** the motions.

[1] [N.B. In the motion to reconsider, RJF objected to this label. To be a Relator is to initiate an original proceeding. TEX. R. APP. P. 3(f). RJF *appealed*. This is not a contempt case. *RJF*]

/s/ Josesph B. Morris
JOSEPH B. MORRIS
JUSTICE

Rule 14.1(i)(iv)—Any Judgment of different date

No judgment of date different from the opinion.

Texas Criminal Procedure Code

Art. 11.09. Applicant Charged With Misdemeanor.

If a person is confined on a charge of misdemeanor, he may apply to the county judge of the county in which the misdemeanor is charged to have been committed, or if there be no county judge in said county, then to the county judge whose residence is nearest to the courthouse of the county in which the applicant is held in custody.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

TEX. CRIM. PROC. CODE ANN. art. 11.09 (West 2010). *Cf.* Art. 11.07 ("convicting court").

Art. 11.15. Writ Granted Without Delay.

The writ of habeas corpus shall be granted without delay by the judge or court receiving the petition, unless it be manifest from the petition itself, or some documents annexed to it, that the party is entitled to no relief whatever.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

TEX. CRIM. PROC. CODE ANN. art. 11.15 (West 2010).

Art. 11.16. Writ May Issue Without Motion.

A judge of the district or county court who has knowledge that any person is illegally confined or

restrained in his liberty within his district or county may, if the case be one within his jurisdiction, issue the writ of habeas corpus, without any motion being made for the same.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

TEX. CRIM. PROC. CODE ANN. art. 11.16 (West 2010).

Rule 14.1(i)(vi)—Additional Essential Materials

Reference to the Record is adequate.

Appendix B—Orders in related cases

Supreme Court of Texas—On direct appeal, 2010 March 12

[SEAL of THE STATE OF TEXAS]

OFFICIAL NOTICE FROM
SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711-2248

RE: Case No. 09-1028 DATE: 3/12/2010
COA #: 05-08-00984-CR TC #: 002-81238-06
STYLE: RICHARD JOHN FLORANCE, JR.
v. STATE OF TEXAS

Today, the Supreme Court of Texas denied the petition for review in the above-referenced case.

MAIL TO:
MR. RICHARD JOHN FLORANCE JR.
1908 VASSAR DRIVE
RICHARDSON TX 75081

[Pitney Bowes meter mark:
02 1A $-00.28[0]
0004392386 MAR 12 2010
MAILED FROM ZIP CODE 78 701]

401st District Court—STATE's confession of having no case, 2006 July 13

FILED
06 JUL 13 AM 8:58
HANNAH KUNKLE
DISTRICT CLERK
COLLIN COUNTY, TEXAS
By ____/s/_____ DEPUTY

FILED
COUNTY COURT AT LAW
2006 JUL 13 AM 10:33
_____ CLERK
COLLIN COUNTY, TEXAS
By ____/s/_____ Deputy *

MISCELLANEOUS DOCKET NO. *401-02217-06*

	§	**IN THE DISTRICT**
	§	**COURT**
IN RE: A PURPORTED	§	
LIEN OR CLAIM	§	*401st* **JUDICIAL**
AGAINST CLERK	§	**DISTRICT**
BRENDA TAYLOR	§	
	§	**COLLIN COUNTY,**
	§	**TEXAS**

JUDICIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING A DOCUMENT PURPORTING TO CREATE A LIEN

---

* [N.B. Filestamp of the conformed copy filed in the County Court. *See* No. 06-777. *RJF*]

On this the 13th day of July, 2006, in the above-entitled and numbered cause, this Court reviewed a motion, verified by affidavit, of Collin County Clerk Brenda Taylor and the documentation attached thereto, No testimony was taken from any party, nor was there any notice of the Court's review, the Court having made the determination that a decision could be made solely on review of the documentation or instrument under the authority vested the Court under Subchapter j, Chapter 51 TEXAS GOVERNMENT CODE.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED THAT after reviewing Collin County Clerk Brenda Taylor's MOTION FOR JUDICIAL REVIEW OF DOCUMENTATION OR INSTRUMENT PURPORTING TO CREATE A LIEN OR CLAIM and documentation, the Court hereby **FINDS** that the documentation ["FLORANCE'S FIRST NOTICE OF LIEN"] is fraudulent as defined by TEXAS GOVERNMENT CODE §51.901(c) and:

(1) IS NOT provided for by specific State or Federal statutes or Constitutional provisions;

(2) IS NOT created by implied or express consent or agreement of the obligor, debtor or the owner of the real or personal property or an interest in the real or personal property, if required under the law of this State or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person;

(3) IS NOT an equitable, constructive, or other lien imposed by a court of competent jurisdiction created by or established under

the Constitution or laws of this State or the United States;

(4) IS NOT † asserted against real or personal property or an interest in real or personal property. There is no valid lien or claim created by "FLORANCE'S FIRST NOTICE OF LIEN".

[⊥ 2]

This Court makes no finding as to any underlying claims of the parties involved, and expressly limits its findings of fact and conclusions of law to the review of a ministerial act. The County clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation or instrument was originally filed, and the Court directs the County Clerk to index it using the same names that were used in indexing the subject documentation or instrument.

Signed this the *13* day of *July*, 2006

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† [N.B. This tracks the *form*, exactly. West Virginia copied this exactly. Kansas fixed this part of it. *RJF*]

/s/ Mark J. Rusch
DISTRICT COURT JUDGE